



## Shelby County Attorney's Office

### Memorandum

To: JULIE ELLIS, Esq., Chairperson, Metropolitan Government Charter Commission

From: CRAIG E. WILLIS, Assistant County Attorney *CEW*

Date: December 22, 2009

Subject: METRO CHARTER REQUIREMENTS; MECHANISM FOR SCHOOL FUNDING WHERE METROPOLITAN GOVERNMENT IS ADOPTED AND SPECIAL SCHOOL DISTRICT(S) NOT CONSOLIDATED WITH COUNTY SCHOOL SYSTEM

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You requested responses to the following:

#### QUESTIONS

- 1.) Pursuant to the recent amendments to the Metropolitan Government Act, when a county in which there is a special school district, such as Shelby, adopts a Metropolitan form of government and schools are not consolidated, what mechanism provides for continued funding of the separate school districts following adoption of the Metro-Charter?
- 2.) What provisions are required to be included in the Metro-Charter to address local education funding?
- 3.) What requirements does state law designate with respect to local school funding under such circumstances?

#### BRIEF ANSWERS

1. In Tennessee, counties are required by state law to provide local education funding for schools. A metropolitan charter *shall* provide for the creation of a metropolitan government vested with any and all powers that counties are, or may hereafter be, authorized or **required to exercise** under the Constitution and general laws of the State of Tennessee. Therefore, Tenn. Code Ann. § 49-3-315(a), among other provisions of the Educational Finance Act, require that the proposed metropolitan charter must provide for local *funding* for both the Shelby County School System and the Memphis City School System.

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2. The proposed Metropolitan Charter must address *taxation*, but the Attorney General has opined it is not required to include the precise mechanisms by which local revenues are directed to the schools.

3. Tenn. Code Ann. § 49-3-315(a) imposes upon counties, and therefore, upon any metropolitan government adopted in Shelby County, an obligation to levy not more than one school tax for current operation and maintenance of both the Memphis School district and the Shelby County School District, sufficient to meet the local funding requirements under the BEP. Tenn. Code Ann. § 49-3-356.

### **ANALYSIS**

With respect to SB 2192/HB 2194 (Pub. Chap. 371, Public Acts of 2009), which amended Tenn. Code Ann. § 7-2-108(a) and Tenn. Code Ann. § 7-3-302(1), effective June 5, 2009, the Tennessee Attorney General opined in Opinion 09-108 dated June 8, 2009, as follows:

The proposed metropolitan charter would be required to address taxation and the functions, including schools, to be provided by the new metropolitan government. Consequently, the charter would be required to set forth the school systems that would be under the new government, as well as providing for the funding of those systems. The statute stating the requirements for a proposed metropolitan charter do not require that the charter language include the precise mechanisms by which local revenues are directed to the schools. State education funding statutes, however, provide that the metropolitan government legislative body would be responsible for providing local funding for both the Shelby County School System and the Memphis City School System, if the systems were not consolidated.

Op. Tenn. Atty. Gen. No. 09-108 (June 8, 2009), 2009 WL 1644056 at \*1.

This Memorandum begins with a review of the above requirements as described by the Attorney General. Following that analysis is a discussion of the statutory requirements for local educational funding applicable to a Metropolitan government where the schools have not been consolidated.

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I.  
*A.G. Opinion*

The Attorney General opined in Opinion 09-108 that the proposed Metropolitan Charter must address the *functions* to be provided by the new metropolitan government, **including schools**. Op. 09-108 at \*1. The opinion notes that Tenn. Code Ann. § 7-2-108(a),<sup>1</sup> which was amended by Pub. Chap. 371, “sets forth the **matters which must be addressed in a proposed metropolitan charter . . .**” *Id.* at \*2. (Emphasis added.) The Attorney General observes further that Tenn. Code Ann. § 7-2-108(a)(1)(B) indicates the proposed Metropolitan charter *shall* provide for the creation of a metropolitan government vested with any and all powers that counties are, or may hereafter be, authorized or **required to exercise** under the Constitution and general laws of the state of Tennessee. *Id.* at \*2. In Tennessee, counties are required by state law to provide local education funding for schools.

The constitution . . . [Article XI, Section 12] imposes upon the General Assembly the obligation to maintain and support a system of free public schools that affords substantially equal educational opportunities to all students. The means whereby this obligation is accomplished, is a legislative prerogative. **The system may include the imposition of funding** and management **responsibilities upon counties**, municipalities, and school districts, within their respective constitutional powers.

*Tennessee Small School Systems, Inc. v. McWherter* (“**Small Schools I**”) 851 S.W.2d 139, 140-41 (Tenn. 1993). (Emphasis added.)

Consequently, the proposed Metropolitan Charter must address local school *funding*, as the imposition of funding responsibilities for schools has been imposed upon counties—and by extension, upon metropolitan governments by the state.

The Attorney General also opined that “State education funding statutes . . . provide that the metropolitan government legislative body would be responsible for providing local *funding* for both the Shelby County School System and the Memphis City School System, if the systems were **not** consolidated.” Op. 09-108 at \*1. (Emphasis added.) Hence, under the limitation adopted by the Shelby County Metropolitan Charter Commission, it shall be the *function* of the new metropolitan government to provide local educational *funding* for schools, as mandated by state law, but not to change the structure by which any school district in Shelby County is currently governed. The obligation of the new metropolitan government to provide funding for *both* school systems is discussed further in the following portions of this Memorandum.

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Finally, the Attorney General opined that the proposed Metropolitan Charter must address *taxation*. Op. 09-108 at \*1. However, the Attorney General concluded that “the requirements for a proposed metropolitan charter do **not** require that the charter language include the precise mechanisms by which local revenues are directed to the schools.” *Id.* (Emphasis added.)

## II

### *State Statutory Provisions*

The “Tennessee Educational Finance Act of 1977”, as amended, Tenn. Code Ann. § 49-3-301 *et seq.* “established a procedure for the funding of education for the public schools, grades kindergarten through twelve (K-12).” Tenn. Code Ann. § 49-3-303(a). Counties are subjected to the provisions of the Educational Finance Act, which establishes the “Basic Education Program,” also known as the “BEP”. Tenn. Code Ann. § 49-3-302(3).

Moreover, since a metropolitan government *shall* exercise all powers that counties are **required to exercise** under the Constitution and general laws of the state of Tennessee, Op. 09-108 at \*2; Tenn. Code Ann. § 7-2-108(a)(1)(B), the proposed Metropolitan charter must provide for the local funding of schools pursuant to state statute and the provisions of the BEP.

Tenn. Code Ann. § 49-3-356 imposes upon *the local legislative body*, and therefore, upon **counties** and, by extension and by virtue of Tenn. Code Ann. § 7-2-108(a)(1)(B) (*see*, Op. 09-108 at \*2), upon any metropolitan government, the obligation to include in its budget the local share of the BEP:

**Tenn. Code Ann. § 49-3-356. *Basic education programs; state and local funds.***

**. . . No LEA shall commence the fall term until its share of the BEP has been *included in the budget approved by the local legislative body.* . . .**

(Emphasis added.)

Tenn. Code Ann. § 49-3-315(a) further imposes the following obligation upon counties, and therefore, by extension and by virtue of Tenn. Code Ann. § 7-2-108(a)(1)(B), upon any metropolitan government:

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Tenn. Code Ann. § 49-3-315. Local funds; levy and apportionment; . . .

- (a) For each LEA **there shall be levied for current operation and maintenance not more than one (1) school tax** for all such grades as may be included in the LEA. . . . **All school funds for current operation and maintenance purposes collected by any county**, except the funds raised by any local special student transportation tax levy as authorized in this subsection, **shall be apportioned by the county trustee among the LEAs therein** on the basis of the WFTEADA maintained by each, during the current school year. . . .

. . .  
(Emphasis added.)

Tenn. Code Ann. § 49-3-315(a) requires that “[a]ll school funds for current operation and maintenance purposes collected by any county . . . shall be **apportioned** by the county trustee among the LEAs therein on the basis of the WFTEADA [commonly referred to as “ADA”] maintained by each, during the current school year.” By extension and by virtue of Tenn. Code Ann. § 7-2-108(a)(1)(B), any metropolitan government is obligated to levy for current operation and maintenance not more than one (1) school tax, and the trustee is required to apportion all school funds derived from such school tax among all LEA’s in the county.

### III.

#### *Local funding for Shelby County and Memphis City Schools under Metro-Government*

If the proposed Metropolitan Charter were adopted in Shelby County, the legislative body of the metropolitan government would be obligated to levy one school tax for the current operation and maintenance of county schools sufficient to satisfy the requirements of the BEP. Tenn. Code Ann. § 49-3-356. Moreover, since the schools would **not** be consolidated, the trustee would be required to apportion school tax revenues between the Shelby County Schools (SCS) and the Memphis City Schools (MCS) on the basis of the ADA formula. *Id.*

However, the proposed metropolitan charter could include a provision requiring the new metropolitan government to also pick up the current funding obligation of the City of Memphis for the Memphis School District, as recently determined by the chancery court in *The State of Tennessee, ex rel. The Board of Education of the Memphis City Schools v. Memphis City Council and the City of Memphis* (Chancery No. CH-08-1139) (Thirtieth Judicial District at Memphis) (the “litigation”) regarding the City’s responsibility to provide local funding for operation and maintenance to MCS. Doing this would make the full funding obligation for Memphis City Schools the obligation and responsibility of the new metropolitan government.

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The question would then arise whether the provisions of Tenn. Code Ann. § 49-3-315(a) would require the ADA apportionment of the additional funding provided to Memphis City Schools in fulfillment of the obligation of the City of Memphis pursuant to the chancery court ruling. This is a difficult question and the answer is far from being clear-cut.

On the one hand, if the new metropolitan government charter includes a provision for an urban services district that imposes a surtax within said district to provide the funding for Memphis City Schools that otherwise would have been the obligation of the City of Memphis, it is doubtful that the provisions of provisions of Tenn. Code Ann. § 49-3-315(a) would apply. This statute only requires the ADA apportionment of “[a]ll school funds for current operation and maintenance purposes collected by *any county*”. (Emphasis added.) Therefore, it would **not** apply to school funds collected solely within the urban services district because the urban services district is **not** inclusive of the entire *county*.

However, since this area of local school funding is akin to uncharted waters, it is possible that the conclusion that the ADA requirement of Tenn. Code Ann. § 49-3-315(a) would not apply to school funds collected within the urban services district could be challenged by the Shelby County School District. Nonetheless, the fact that the majority of voters outside of the City of Memphis would have to approve the new metropolitan charter could, perhaps, deprive the Shelby County School District or any taxpayer of the equitable ground upon which to challenge such a provision of the Metro-Charter. Moreover, the mere fact that such provision, if included in the new metropolitan charter, would **not** result in an apportionment of the additional funding collected in the urban services district should not lead to a constitutional flaw to the new Metropolitan charter, since the issue is a matter of *statutory* interpretation, not constitutional law.

Similarly, the Shelby County School District could mount a challenge against such a provision in the metropolitan charter on the ground that it violates the requirement of Tenn. Code Ann. § 49-3-315(a) that “there shall be levied for current operation and maintenance **not more than one (1) school tax** for all such grades as may be included in the LEA.” (Emphasis added.) Again, this is a matter of *statutory* interpretation, not constitutional law. Moreover, it is probable that a court would hold that the provisions of Tenn. Code Ann. § 49-3-315(a) limit **counties** to the imposition of not more than one (1) school tax, and that an urban services district within a metropolitan government is **not** a “county” and, therefore, is not prohibited from levying a school surtax under circumstances where the former municipality becoming part of the metropolitan government was obligated to provide local funding for a special school district.

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## **CONCLUSION**

The conclusions herein are consistent with the current practice in Metropolitan Nashville and Davison County (Nashville). Although schools have been consolidated in Nashville, information I have gathered indicates that Metropolitan Nashville Public Schools (MNPS) levy only one uniform school tax in the General Services District (GSD), making it uniform throughout the Metro Region.<sup>1</sup> However, because of consolidation, there is no ADA apportionment of school funds in Metropolitan Nashville and Davison County.

However, since schools will not be consolidated even if the proposed Metropolitan Charter is adopted in Shelby County, all local school funds **collected by the county** must be apportioned by the Trustee in accordance with the requirement of Tenn. Code Ann. § 49-3-315(a). Notwithstanding the above, school funds collected solely within the urban services district of a metropolitan government are not collected by “the county” as that term is used in Tenn. Code Ann. § 49-3-315(a). The urban services district is **not** inclusive of the entire *county*, therefore, the ADA apportionment provisions of Tenn. Code Ann. § 49-3-315(a) would not apply to such a provision of the new metropolitan government charter.

While no such provision has been proposed and this issue is merely speculative, should the Metropolitan Charter being prepared for ratification include a provision that the new metropolitan government shall be the sole and single local funding source for schools, the apportionment requirement of Tenn. Code Ann. § 49-3-315(a) would still need to be adhered to as to funds collected in the general services district, because a metropolitan charter cannot supersede the provisions of an educational statute or general law of statewide application adopted by the legislature as part of a uniform educational funding plan, even if adopted and ratified by the voters of Shelby County. *See, Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960). However, as to funds collected solely in the urban services district for distribution to the Memphis City Schools in satisfaction of the current obligation of the City of Memphis to fund MCS, it is the conclusion of this Office that the apportionment requirement of Tenn. Code Ann. § 49-3-315(a) would **not** apply.

For your convenience, a copy of the recent Attorney General Opinion 09-108 dated June 8, 2009 is appended to this Memorandum.<sup>ii</sup>

Cc: Members of Metropolitan Government Charter Commission  
Honorable Joe Ford, Interim Mayor, Shelby County  
Brian L. Kuhn, County Attorney  
Christy Kinard, Assistant County Attorney

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<sup>1</sup> Email received by Assistant Shelby County Attorney Craig Willis, December 17, 2009 at 4:23 p.m. on behalf of Chris Henson, MNPS Chief Financial Officer.

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(CFS# A5501-08 / A5190-07)

## **STATUTORY APPENDIX**

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<sup>i</sup> **Tenn. Code Ann. § 7-2-108. Proposed metropolitan charters; required provisions**

(a) The proposed metropolitan charter shall provide:

(1) For the creation of a metropolitan government vested with:

(A) Any and all powers that cities are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter; and

(B) Any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter;

(2) That the territory embraced in the metropolitan government shall be the total area of the county;

(3) The name of the metropolitan government, which name may be:

(A) The name of the principal city followed by the words "metropolitan government";

(B) The name of the county followed by the words "metropolitan government";

(C) A compound word consisting of the name of the principal city of the county, followed by the words "metropolitan government"; or

(D) Such other name as the charter commission shall deem historically and geographically appropriate;

(4) That the metropolitan government shall be a public corporation, with perpetual succession, capable of suing and being sued, and capable of purchasing, receiving and holding property, real and personal, and of selling, leasing or disposing of property, real and personal, to the same extent as other governmental entities;



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(5) For two (2) service districts within the geographical limits of the metropolitan government, a general services district and an urban services district, as to both of which districts the metropolitan government shall have jurisdiction and authority. The general services district shall consist of the total area of the county. The urban services district shall consist originally of the total area of the principal city at the time of the filing of the proposed charter with the county election commission, together with such area of any smaller cities as may be specified in an appendix duly ratified and adopted under § 7-2-107. In the event additional territory has been added to the principal city by annexation, effective subsequent to the creation of a charter commission or subsequent to the time of the filing of the proposed charter, the metropolitan council is hereby authorized, and it shall be its duty to remove from the total area of the urban services district such areas of the principal city as to which the metropolitan government will not be able to provide substantial urban services within a reasonable period, that shall not be greater than one (1) year after ad valorem taxes in the annexed area become due, and which shall specifically include sanitary sewers within a period that shall not be greater than thirty-six (36) months after ad valorem taxes in the annexed area become due;

(6) That the area of the urban services district may be expanded and its territorial limits extended by annexation whenever particular areas of the general services district come to need urban services and the metropolitan government becomes able to provide such service within a reasonable period. The annexation shall be under provisions and limitations specified in the charter, consistent with those provided by §§ 6-51-101--6-51-106;

(7) For the functions of the metropolitan government that shall be performed throughout the entire general services district and the governmental services that shall be rendered in such district;

(8) That the tax levy for the general services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of all governmental services that are provided generally throughout or on behalf of such district;

(9) For the functions of the metropolitan government that shall be performed within the urban services district and the governmental services that shall be rendered in such district;

(10) That the tax levy for the urban services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of municipal-type governmental services that are provided within such district;

(11) For a metropolitan council, which shall be the legislative body of the metropolitan government and shall be given all the authority and functions of the governing bodies of the county and cities being consolidated, with such exceptions and with such additional authority as may be specified elsewhere in chapters 1-6 of this title;

(12) For the size, method of election, qualification for holding office, method of removal, term of office and procedures of the metropolitan council, with such other provisions with respect to the council as are normally related to the organization, powers and duties of governing bodies in cities and counties;

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(13) For the assignment of administrative and executive functions to officers of the metropolitan government, which officers may be given, subject to such limitations as may be deemed appropriate, all or any part of the administrative and executive functions possessed by the county and cities being consolidated and such additional powers and duties, not inconsistent with general law, as may be deemed necessary or appropriate for the metropolitan government;

(14) For the names or titles of the administrative and executive officers of the metropolitan government, their qualifications, compensation, method of selection, tenure, removal, replacement and such other provisions with respect to such officers, not inconsistent with general law, as may be deemed necessary or appropriate for the metropolitan government;

(15) That the urban services district shall be and constitute a municipal corporation with a three-member urban council, whose sole function shall be a mandatory obligation to levy a property tax adequate with other available funds to finance the budget for urban services, as determined by the metropolitan council. The proposed metropolitan charter shall provide the method of selecting the urban council;

(16) For such administrative departments, agencies, boards and commissions as may be necessary and appropriate to perform the consolidated functions of city and county government in an efficient and coordinated manner and for this purpose for the alteration or abolition of existing city and county offices, departments, boards, commissions, agencies and functions, except where otherwise provided in chapters 1-6 of this title or prohibited by the Constitution of Tennessee;

(17) For the maintenance and administration of an effective civil service system, and also for the consolidation of county and city employees' retirement and pension systems and the regulation of such consolidated system; provided, that nothing in chapters 1-6 of this title or in a charter adopted pursuant to those provisions shall impair or diminish the rights and privileges of the existing employees under civil service or in the existing county and city employees' retirement and pension systems;

(18) For the consolidation of the existing school systems with the county and city or cities, including the creation of a metropolitan board of education, which board may be vested with power to appoint a director of schools, if there are no special school districts operating in the county. If one (1) or more special school districts operate within the county, then the metropolitan charter need not provide for the consolidation of the existing school systems. If the school districts are not consolidated, then any special school district shall continue to exist as a separate entity;

(19) For a determination, as between the general services district and the urban services district, of proportionate responsibility for the existing county bonded indebtedness, both countywide and district, and for the existing municipal indebtedness;

(20) For the method and procedure by which the charter may subsequently be amended; provided, that no such amendment shall be effective until submitted to the qualified voters residing within the general services district and approved by a majority of those voters voting on the amendment;

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(21) For such procedures, methods and steps as are determined to be necessary or appropriate to effectuate a transition from separate county and city governments into a single metropolitan government in which the functions of county and of city have been consolidated; and

(22) Such terms and provisions as are contained in any private act or municipal charter with respect to any municipally owned utility supported by its own revenues and operated, administered and managed pursuant to the private act or municipal charter; provided, that such terms and provisions of the charter may subsequently be amended pursuant to subdivision (a)(20).

(b) The metropolitan charter may provide for annual assessments of real property.

(c) In each county in this state, without regard to population, the metropolitan charter may provide, in addition to the urban services district and general services district required by subdivision (a)(5), for one (1) or more special service districts within all or any part of the general services district outside the urban services district, for the purpose of furnishing in any part or all of the general services district one (1) or more services that are furnished within the urban services district. If the metropolitan charter provides for special service districts, the following provisions shall apply to the creation, alteration, and taxation of special service districts:

(1) The boundaries of special service districts shall be determined by the metropolitan council and shall become fixed by ordinance of the metropolitan council thirty (30) days or more after notice of the determination of the boundaries of a district has been given to the property owners of the district. Notice shall be given by mailing a description of the boundaries of the district to all of the property owners of record within the district, at their last known address. It shall not be necessary for the boundaries of any special service district to be contiguous with the boundaries of the urban services district. The boundaries of any special service district may be altered at any time by means of the same procedure by which it was created;

(2) The metropolitan council shall levy an annual ad valorem tax upon the property owners of each special service district. The tax shall be set at a rate sufficient to pay that special service district's share of the total budget of the metropolitan government for the particular service being rendered to the residents and property owners of the district. The tax shall be assessed in the same manner as the general services district tax and collected as an addition to the general services district tax;

(3) Each special service district may be given a name that the metropolitan council deems appropriate, and the boundaries of special service districts may overlap or be coextensive with boundaries of other special service districts;

(4) In the case of special service districts for sanitary sewers, the sanitary sewers shall be furnished to the residents and property owners of the special service districts within thirty-six (36) months after ad valorem taxes in the special service districts become due; and

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(5) When substantial urban services are offered within an area served by special service districts, then that area shall become a part of the urban services district under the charter provisions and limitations established pursuant to subdivision (a)(6).

(d) Those counties with populations in excess of four hundred fifty thousand (450,000) according to the 1980 federal census or any subsequent federal census, and having a metropolitan form of government, shall provide that any member of a board, commission or authority created under the charter of a metropolitan government may be removed from office upon a vote of three fourths (  $\frac{3}{4}$  ) of the members of the governing body of the metropolitan government, but only for good cause shown as set forth in a resolution passed by a three-fourths (  $\frac{3}{4}$  ) majority vote of the members of the governing body, and only after the holding of a public hearing before the governing body.

**Formerly § 6-3711.**

CREDIT(S): 1957 Pub.Acts, c. 120, § 10; 1961 Pub.Acts, c. 199, § 5; 1963 Pub.Acts, c. 42, § 1; 1970 Pub.Acts, c. 467, § 1; 1971 Pub.Acts, c. 14, § 1; impl. am. by 1972 Pub.Acts, c. 740, § 7; 1991 Pub.Acts, c. 517, § 1; 1992 Pub.Acts, c. 828, § 1; 1993 Pub.Acts, c. 179, § 1, eff. April 13, 1993; 2001 Pub.Acts, c. 115, § 1, eff. July 1, 2001; 2001 Pub.Acts, c. 168, § 1, eff. May 3, 2001; 2009 Pub.Acts, c. 371, § 1, eff. June 5, 2009.

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**Tenn. Op. Atty. Gen. No. 09-108, 2009 WL 1644056**

Office of the Attorney General  
State of Tennessee

Opinion No. **09-108**

June 8, 2009

Effect of SB 2192/HB 2194 on Local Educational Funding in the event of consolidation of the City of Memphis and Shelby County

The Honorable G.A. Hardaway  
State Representative

### **QUESTIONS**

1. If SB2192/HB2194 were to become law and the city of Memphis and Shelby County proposed to consolidate without consolidating the school systems operating within Shelby County, would the proposed metropolitan charter be required to address how local funding would be provided and what entity or entities would be responsible for providing local funding for the present Shelby County school system and the present Memphis City school system?
2. If the answer to question 1 is no, what process would be followed to determine the entity or entities which would be responsible for providing local funding and maintenance of effort for the present Shelby County school system and the present Memphis City school system?

### **OPINIONS**

1. The proposed metropolitan charter would be required to address taxation and the functions, including schools, to be provided by the new metropolitan government. Consequently, the charter would be required to set forth the school systems that would be under the new government, as well as providing for the funding of those systems. The statute stating the requirements for a proposed metropolitan charter do not require that the charter language include the precise mechanisms by which local revenues are directed to the schools. State education funding statutes, however, provide that the metropolitan government legislative body would be responsible for providing local funding for both the Shelby County School System and the Memphis City School System, if the systems were not consolidated.

2. In light of our answer to question no. 1, this question is pretermitted.

### **ANALYSIS**

Your questions focus upon SB2192/HB2194, which provides, in pertinent part, as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

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SECTION 1. Tennessee Code Annotated, Section 7-2-108(a), is amended by deleting subdivision (18) in its entirety and by substituting instead the following:

(18) For the consolidation of the existing school systems with the county and city or cities, including the creation of a metropolitan board of education, which board may be vested with power to appoint a director of schools, if there are no special school districts operating in the county. If one (1) or more special school districts operate within the county, then the metropolitan charter need **not** provide for the consolidation of the existing school systems. If the school districts are **not** consolidated, then any special school district shall continue to exist as a separate entity.

SECTION 2. Tennessee Code Annotated, Section 7-3-302, is amended by deleting subdivision (1) and by substituting instead the following:

**\*2** (1) Assume and take over all public functions, rights, duties, property, assets and liabilities of any utility district, sanitary district, school district or other public service district, all of whose public functions, services or duties are performed within the geographical jurisdiction of such metropolitan government, notwithstanding § 7-82-301, or any other statute; except, that if the metropolitan charter did not provide for the consolidation of the existing school systems, then such metropolitan government shall not have the power or authority to assume any public function, right, duty, property, asset or liability of any special school district that was not included in the consolidation of the local governments; [...].

SB2192/HB2194 amends two statutes: Tenn. Code Ann. §§ 7-2-108(a) and 7-3-302. Tenn. Code Ann. § 7-2-108(a) sets forth those elements that are required to be addressed and provided for in any proposed metropolitan charter when a metropolitan government is proposed for adoption. Tenn. Code Ann. § 7-3-302, on the other hand, sets forth those public functions that a metropolitan government, once established, may or may not choose to assume. Your questions therefore require a closer look at Tenn. Code Ann. § 7-2-108(a) in particular.

Tenn. Code Ann. § 7-2-108(a) sets forth the matters which must be addressed in a proposed metropolitan charter and is therefore key to answering your question regarding whether a proposed Memphis/Shelby County Charter must address local funding for the City and County School Systems. The statute states, in pertinent part:

(a) The proposed metropolitan charter shall provide:

(1) For the creation of a metropolitan government vested with:

(A) Any and all powers that cities are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter; and

(B) Any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter;

[....]

(7) For the functions of the metropolitan government that shall be performed throughout the entire general services district and the governmental services that shall be rendered in such district;

(8) That the tax levy for the general services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of all governmental services that are provided generally throughout or on behalf of such district;

**\*3**

(9) For the functions of the metropolitan government that shall be performed within the urban services district and the governmental services that shall be rendered in such district;

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(10) That the tax levy for the urban services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of municipal-type governmental services that are provided within such district;

(11) For a metropolitan council, which shall be the legislative body of the metropolitan government and shall be given all the authority and functions of the governing bodies of the county and cities being consolidated, with such exceptions and with such additional authority as may be specified elsewhere in chapters 1-6 of this title;

[....]

(18) For the consolidation of the existing school systems with the county and city or cities, including the creation of a metropolitan board of education, which board may be vested with power to appoint a director of schools[, if there are no special school districts operating in the county. If one (1) or more special school districts operate within the county, then the metropolitan charter need not provide for the consolidation of the existing school systems. If the school districts are not consolidated, then any special school district shall continue to exist as a separate entity]; [FN1]

[....].

(Emphasis added). Tenn. Code Ann. § 7-2-108(a) thus sets forth in general terms those governmental matters that must be addressed in a proposed charter. As the emphasized language indicates, a proposed charter must set forth those governmental services and functions that the new metropolitan government will assume, and must also provide that the tax revenues will be sufficient to pay for those services. With regard to schools, this appears to require that the charter set forth the school systems that would be operated under the new government, as well as providing for the funding of those systems. Tenn. Code Ann. § 7-2-108(a) does not appear to require, however, that a detailed account of the precise methods of funding schools in the new metropolitan government be set forth in the charter.

Tenn. Code Ann. § 7-2-108(a) must be read in harmony with other existing Tennessee statutes which are also applicable. If SB2192/HB2194 is enacted, and the Memphis City School System and the Shelby County School System are not consolidated, the metropolitan council created pursuant to Tenn. Code Ann. § 7-2-108(a)(11) will be responsible for funding both systems. The language of SB2192/HB2194 amending Tenn. Code Ann. § 7-2-108(a), includes the statement, “[i]f the school districts are not consolidated, then any special school district shall continue to exist as a separate entity.” It would be inconsistent with this statement for the new metropolitan council to disclaim responsibility for the funding of a school district where the legislature has so clearly indicated its intent that the school system “shall continue to exist.” The Memphis City School System is a special school district.

**\*4** In accordance with our previously-issued opinions affirming the state law requirement that local governments abide by the “maintenance of effort” provisions of Tenn. Code Ann. §§ 49-3-314(c)(1) and 49-2-203(a)(10)(A)(ii), [FN2] the new metropolitan council would clearly be responsible for providing local funding for both the Shelby County School System and the Memphis City School System, even if the two systems are not consolidated, because [financing of (cew)] both systems would fall within the purview of the newly formed metropolitan government.

Robert E. Cooper, Jr.  
Attorney General and Reporter

Michael E. Moore  
Solicitor General

**Memo to Julie Ellis, Esq.**

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Kevin Steiling  
Deputy Attorney General

[FN1]. Language within brackets reflects amendment added by SB2192/HB2194.

[FN2]. *See e.g.*, Op. Tenn. Att'y Gen. No. 08-194 (December 29, 2008); Op. Tenn. Att'y Gen. No. 05-021 (March 10, 2005)

Tenn. Op. Atty. Gen. No. 09-108, 2009 WL 1644056 (Tenn. A.G.)  
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